



Comptroller General
of the United States

Washington, D.C. 20548

Curcio
145110

Decision

Matter of: Worldwide Security Services, Inc.

File: B-244693; B-244693.2

Date: October 21, 1991

Arthur Pitts, Esq., for the protester.
Mark F. Fittipaldi, Esq., Agency for International Development, for the agency.
Mary G. Curcio, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly eliminated protester's proposal from consideration for award is denied where the protester's written response to agency's discussion questions indicated that the protester failed to comply with material solicitation requirements. Once the agency learned that protester's proposal was unacceptable, it was under no obligation to conduct further discussions with the protester to give it the opportunity to convince the agency that its offered product in fact complied with the specifications.
2. Discussions were meaningful where questions posed by the agency led the protester into the areas of its proposal with which the agency was concerned.
3. A competitive procurement is not converted into a sole-source procurement because, after proposal evaluation, only one offeror is found to meet the specifications set out in the solicitation.
4. Where a procuring agency uses another agency's qualified products list to solicit companies that might meet its requirements, inclusion of firm's product on the list does not automatically mean that the firm's product meets the procuring agency's needs.

DECISION

Worldwide Security Services, Inc. protests the award of a contract to EG&G Astrophysics Research Corporation (EG&G) under request for proposals (RFP) No. Egypt-91-011, issued by the Agency for International Development (AID) to procure security equipment for Cairo International Airport.

We deny the protest.

The RFP was issued by AID on May 23, 1991, on behalf of the State Department to four firms, including Worldwide and EG&G.¹ The RFP was divided into four schedules. The first and second schedules, which requested enhanced X-ray security equipment in accordance with detailed specifications listed in the RFP, are at issue in this protest. The RFP provided that the contract would be awarded to the responsible offeror whose offer, conforming to the solicitation would be most advantageous to the government, cost or price and other factors, specified elsewhere in the solicitation, considered.

On June 17, the due date for initial proposals, AID received offers from the four firms that were requested to submit proposals. These proposals were evaluated by a member of the evaluation committee from FAA to determine whether they met the specifications set out in the RFP. The evaluator determined that one of the offerors failed to meet the minimum specification requirements. He was uncertain, however, as to whether the remaining three offerors met the specifications. Subsequently, AID held oral discussions with each of the three firms, requesting them to clarify certain portions of their proposals and to confirm their responses in writing.² After the agency reviewed the

¹ The United States Embassy initially provided a written justification to AID to procure the X-ray equipment from EG&G on a sole-source basis. AID, however, found that the justification was not sufficient to warrant a sole-source award. Subsequently, due to the urgency in the Middle East brought about by the Iraq-Kuwait conflict, the Embassy requested that the procurement be conducted on a limited competition basis. The AID/Cairo director agreed, and the RFP was issued to only those firms with equipment on the Federal Aviation Administration (FAA) Qualified Products List (QPL) for enhanced X-ray machines and the FAA QPL for cabinet X-ray machines.

² The agency argues that it did not hold discussions with the firms, but, instead, only submitted requests for clarification to each of the firms. Discussions encompass any oral or written communications between the government and an offeror that solicit information essential for determining if a proposal is acceptable or which provide the offeror the opportunity to modify its proposal. A request for clarification is merely an inquiry for the purpose of eliminating minor uncertainties or irregularities in a proposal. Microlog Corp., B-237486, Feb. 26, 1990, 90-1 CPD ¶ 227. Here, the agency's expressed purpose in contacting Worldwide and the other two firms was to determine whether

responses, it determined that only EG&G met the specifications. Consequently, the agency awarded the contract for these schedules to EG&G, even though the firm submitted the highest-priced proposal. This protest by Worldwide followed.

Worldwide protests that the agency improperly determined that the firm did not meet the specifications. The RFP required X-ray equipment that provided a color display of different organic and inorganic substances. The specifications for the system provided that, "[t]he displayed color saturation (intensity of hue) shall vary with the object thickness, but the color will not." The specifications also required that the system assign color by type of substance rather than by density of objects. In its initial proposal, Worldwide stated, "[w]e will assign colors by the type of substance rather than the density," and "[w]e meet or exceed all requirements as called out in the paragraph E-1000." Based on Worldwide's use of the future tense, "[w]e will . . ." the technical evaluator questioned whether Worldwide had the present capability to assign colors by type of substance. The evaluator also questioned whether Worldwide's color would vary with the thickness of an object since Worldwide did not address this point in its proposal. During the oral discussions, these issues were raised with Worldwide, and Worldwide was also requested to confirm its responses in writing.

There is some dispute between AID and the protester as to how Worldwide responded during the oral discussions. Nevertheless, in the letter Worldwide sent to AID after the discussions were completed Worldwide stated, "[w]e utilize pseudo color and density identification . . . The displayed color will vary with the object thickness." Based on this response, which directly contradicted the requirements of the solicitation, the evaluator determined that Worldwide did not comply with the specifications, and AID eliminated the firm from consideration for award.

Worldwide asserts that the agency improperly determined that the firm did not meet the specifications based on the letter it sent following the discussions. Worldwide asserts that AID's conclusion is unreasonable because the firm's initial proposal stated that it would assign color by substance and not by density. Worldwide also acknowledges that it would have been preferable to state that the displayed color saturation rather than the displayed color will vary with the object thickness but argues that it was unreasonable for

they complied with the specifications set out in the RFP. Accordingly, we conclude that AID held discussions with these firms.

the agency to interpret its letter as a disclaimer of its initial proposal which specifically stated that Worldwide would comply with all the specifications. Worldwide further contends that since it did not state the hue would change, it was unreasonable for the agency to conclude that Worldwide intended to communicate that the color would change with the thickness of the object. Worldwide argues that in any case if the agency determined that the proposal was unacceptable because Worldwide's equipment did not meet the specifications, it should have given the firm the opportunity to correct the deficiency. Worldwide also argues that the discussions the agency did hold with the firm were not meaningful because Worldwide was not told that its proposal contained any deficiencies, and it was not afforded the opportunity to correct its deficiencies after the oral conversation.

In a negotiated procurement, any proposal which does not conform to the material terms and conditions of the solicitation may not form the basis for award. An offeror has an obligation to submit a proposal which fully demonstrates the technical acceptability of its offered product. Where an offeror fails to set forth clearly in its proposal technical information that convinces the procuring agency that the proposed product meets the agency's minimum needs, the agency may reasonably find the proposal technically unacceptable. Halter Marine, Inc., B-239119, Aug. 2, 1990, 90-2 CPD ¶ 95. Here, after reading Worldwide's initial proposal, AID was unclear as to whether Worldwide's equipment met the specifications concerning assignment of color. Based on its concern, the agency questioned Worldwide in these areas and received a written response from the firm which indicated that Worldwide's X-ray machine would not perform as required by the specifications.

Once the agency determined, based on Worldwide's response to the discussion questions, that Worldwide did not meet the specifications, it was under no obligation to hold further discussions with the firm. See Security Def. Sys. Corp., B-237826, Feb. 26, 1990, 90-1 CPD ¶ 231. While it may be that Worldwide did intend to comply with the specifications, its clarifying letter specifically indicated that the firm's equipment did not comply with the specifications. Although an agency may sometimes seek to clarify minor uncertainties in a particular proposal, where, as here, the information sought is essential to determining its acceptability, a request for such information constitutes the reopening of negotiations, and an agency generally has no legal duty to reopen negotiations to permit a single offeror to submit a revised proposal. Mannesmann Tally Corp., B-238790.4, Oct. 16, 1990, 90-2 CPD ¶ 293.

Worldwide also alleges that the oral discussions AID did hold with the firm were not meaningful because AID did not specifically inform Worldwide that its proposal was deficient or give the firm the opportunity to revise its proposal. Agencies are not required to afford offerors all-encompassing discussions but, rather, need only lead offerors into areas of their proposal that require amplification. Honeywell RegelSysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. In other words, in determining whether discussions are meaningful the dispositive issue is not whether an agency specifically states to a firm that certain areas of its proposal are deficient, but whether the agency leads the offeror into the areas of its proposal considered deficient. Reflectone Training Sys., Inc., B-240951, Dec. 10, 1990, 90-2 CPD ¶ 472. Here, there is no dispute on the record that the agency discussed with Worldwide the two areas of the protester's proposal that it believed did not conform to the specifications, thus giving Worldwide the opportunity to demonstrate that it did meet the specifications. Further, while the agency did not request a formal proposal revision, it did ask Worldwide to confirm its responses in writing, again giving the firm the opportunity to demonstrate that it met the specifications. Consequently, we conclude that the discussions were meaningful.

Worldwide also appears to complain that the agency was in fact conducting a de facto sole-source procurement. Worldwide bases this allegation on the fact that the Embassy initially tried to justify a sole-source award to EG&G, and that EG&G ultimately was awarded the contract.

There is no evidence in the record to indicate that AID was attempting to award the contract to EG&G on a sole-source basis. While the State Department initially wanted to award the contract to EG&G on a sole-source basis, its written justification was rejected by AID. Thus, there is no evidence to suggest that AID was predisposed to award the contract to EG&G on a sole-source basis. Moreover, AID issued a competitive solicitation and received and evaluated four offers. The fact that only one firm was considered acceptable after the competition was held did not convert the competitive procurement into a sole-source procurement. See Native Am. Consultants, Inc.; ACKCO, Inc., B-241531; B-241531.2, Feb. 6, 1991, 91-1 CPD ¶ 129.

Finally, Worldwide questions how the agency could determine that Worldwide's equipment did not meet its needs when the equipment is on the FAA QPL. As explained by the agency, however, it only used the QPL as a basis to find firms that might meet its minimum needs. The fact is, however, that in placing equipment on the QPL the FAA did not consider AID's specific minimum needs. Thus, Worldwide's inclusion on the

list did not indicate that the firm's equipment automatically met the needs of AID.

The protest is denied.

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for James F. Hinchman
General Counsel